IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU 017 OF 2021
[Lautoka Criminal Case No. HAC 186 of 2020]

BETWEEN	:	**MOHAMMED RIYAZ**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Prematilaka, RJA**
		Qetaki, RJA
		Rajasinghe, JA
Counsel	:	**Mr. Fesaitu, M & Ms. Muhammed, B for the Appellants**
	:	**Ms. Latu, L for the Respondent**
Date of Hearing	:	**14 May 2025**
Date of Judgment	:	**29 May 2025**

JUDGMENT

Prematilaka, RJA

[1] I agree with Qetaki, RJA that the appeal against conviction should be dismissed and non-parole period should be made 12 years.

Qetaki, RJA

Background

[2] The Appellant, had been charged with one count of rape and one count of attempted rape of the female child victim of 11 years old, under the Penal Code in the Magistrates Court at Ba. The Information states:

Count 1

Statement of offence

Rape: Contrary to section 149 and 150 of the Penal Code, Cap.17

Particulars of offence

Mohammed Riyaz on the 16th day of July, 2008 at Koronubu, Ba in the Western Division had unlawful carnal knowledge of "LB" without her consent.

Count 2

Statement of offence

Attempted Rape: Contrary to section 151 of the Penal Code, Cap.17.

Particulars of Offence

Mohammed Riyaz on the 17th day of July 2008 at Koronubu, Ba in the Western Division attempted to have unlawful carnal knowledge of "LB"

[3] On 23 November 2020 the learned Magistrate found the Appellant guilty of rape and convicted him accordingly. The case was sent to the High Court for sentencing pursuant to section 190 (1) of the Criminal Procedure Act 2009.

[4] On 25 January 2021, the High Court sentenced the Appellant to an aggregate imprisonment of 16 years and after the pre-trial remand period was deducted the final sentence became 15 years, 09 months and 16 days. The sentence was also subject to a non-parole period of 13 years.

[5] The Appellant's appeal against conviction and sentence is timely.

The Facts

[6] The Facts as summerised by the sentencing Judge in the Sentencing order are as follows:

> *"5 ……..... The victim and the accused are known to each other, the accused is the victim's paternal uncle. In the year 2008 the victim was 11 year of age and a class 6 student both were living in the same house.*
>
> *6. On 16th July, 2008 the victim came back from school late, at about 3.45pm she was having tea at home. At this time, the victim's grandmother and sisters were in the farm. The victim wanted to join them, however, the accused called the victim into his bedroom. When the victim went into the*

room she saw the accused was wearing a towel at this time the accused held the victim tightly, put her on the bed and removed her panty and his towel.

7. *The accused threatened the victim if she shouted he would assault her, thereafter the accused had forceful intercourse with the victim.*

8. *The next day on the 17th the accused called the victim in his room. In the bedroom he laid the victim on his bed lifted her dress, removed his towel and got on top of the victim. The accused threatened the victim not to shout otherwise he will assault her.*

9. *The accused wanted to have sexual intercourse with the victim but could not so he forcefully rubbed his penis on the victim's vagina and then licked her vagina. Later the matter was reported to the police, the accused was arrested cautioned interviewed and charged."*

Grounds of Appeal

[7] The grounds of appeal urged by the Appellant are as follows.

Against Conviction

Ground 1: *That the learned trial Magistrate had erred in ruling the Appellant's caution interview statement admissible, in doing so, was erroneous in assessing the evidences.*

Ground 2: *That the learned trial Magistrate had erred in determining that the medical doctor's finding is consistent to the history relayed, when the history relayed by the complainant is inadmissible on the basis of hearsay.*

Ground 3: *That the conviction on the charge of attempted rape is not supported by the totality of evidence.*

Against Sentence

Ground 1: *The sentence should reflect the inordinate delay in bringing the criminal proceedings to finality.*

The Law

[8] In terms of section 21(b) and (c) of the Court of Appeal Act, the Appellant could appeal against conviction and sentence only with the leave of court. For a timely appeal the test for leave to appeal against conviction and sentence is "*reasonable prospect of succeed"* – see **Caucau v State** [2018] FJCA 171; AAU0029 of 2016 (04 October 2018), **Navuki v State** [2018] FJCA 172;AAUoo38 of 2016(04 October 2018) and **State v Vakarau** [2018] FJCA 173; AAU0052 of 2017 (04 October 2018),

Sadrugu v The State [2019] FJCA87;AAU0057 of 2015 (06 June 2019), and **Waqasaqa v State** [2019] FJCA 144;AAU83 of 2015 (12 July 2019) that will distinguish arguable grounds - see **Chand v State** [2018] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106;AAU10 of 2014 (15 July 2014) and **Naisua v State** {2013] FJSC 14; CAV 10 0f 2013 (20 November 2013) from non-arguable grounds – see **Nasila v State** [2019] FJCA 84; AAU0004 of 2011(06 June 2019).

In the Magistrates' Court

(A) *Voir Dire*

[9] The accused had objected to the admission into evidence of his caution interview and filed *voir dire* grounds. At the conclusion of the prosecution case for voir dire and trial proper, the Appellant (DW1) exercised his right to testify for both voir dire and trial proper. He did not call any defence witness.

[10] The law requires that the prosecution is to prove beyond reasonable doubt that the caution interview and charge statement was obtained freely and without fear, force, threats or inducement, for the caution interview and charge statement to be admissible as evidence at the trial. A hearing was conducted to determine the admissibility of the caution interview and charge statement of accused in which 8 Police officers were called as witnesses. These officers were alleged to have come into contact with the accused from time to time since he was arrested, to the formal charge process. The accused also gave evidence. He did not call any other witness.

[11] The learned Magistrate having considered all the evidence of both prosecution witnesses and accused found for the prosecution. Paragraph 11 of the Ruling states:

> *"11. I've carefully considered all the evidence of both prosecution and accused in relation to the issue at hand. I find prosecution witnesses to be more credible and believable. The version of events alleged by the accused person has not created any reasonable doubt in the prosecution case. Apparently, most of the allegations asserted by the accused in his testimony was never put to State witnesses in cross examination and appears to be an afterthought. I thus find that the accused person had given his caution interview statement voluntarily."*

[12] The learned Magistrate ruled that the caution interview of the accused person was conducted fairly and obtained voluntarily, and was admissible as evidence.

(B) Judgment-Magistrates Court

[13] The trial was held at the Ba Magistrates Court with 10 witnesses who testified for the prosecution. The accused also gave evidence and he did not call any witnesses. In considering the evidence in its entirety, the learned Magistrate found the complainant to be forthcoming and straightforward with her evidence. She was not discredited in cross-examination, and was firm and consistent, and she was found to be a reliable and credible witness.

[14] The learned Magistrate found (in relation to count 1) that the opportunity was there for the accused to have committed the offence as the family members were in the garden outside and elsewhere whilst the complainant and the accused were alone in the house.

[15] The police officers who were involved in the enquiry into the case were consistent in their testimony. They denied any assault or force used to compel the accused, and all the rights of the accused were given. The officers were consistent and not discredited. The Court accepts their evidence as reliable and credible.

[16] The learned Magistrate found that the police officers involved in the enquiry into the case were consistent in their testimony. They denied any assault or force used to compel the accused. The learned Magistrate found that the accused's caution interview was conducted fairly without any assault, force or threat and the rights of the accused were given. He cited the following authorities on the effect and implications of a voluntary confession of guilt.

[17] In **R v Sullivan** (1987) 16 104 347 and **R v Sykes** 1938 CR.L.R 233 it was held: *"A voluntary confession of guilt is sufficient to warrant a conviction without corroborative evidence."*

[18] In **R v Baldry,** it was accepted that this is not a question of universal or general application, that a conviction wholly or mainly hanging on oral confession could never be safe or satisfactory. It must in every case be a question to be decided on the facts.

[19] In **State v Rasaciva** Cr. Appeal No. 48/97, the Fiji Court of Appeal agreed that a voluntary confession found to be true is sufficient to warrant a conviction.

[20] On the admission in the caution interview, the Magistrate having considered the admission was satisfied that it is true. That the contents of the interview were truthful. That although the accused did not give a detailed account of what happened on the second occasion, the accused had admitted to committing both the offences in the two counts.

[21] The accused's explanation as to why the complainant concocted the allegation appears illogical. Accused's denial evidence was held to be unreliable and not credible. *"I find the accused has not created a reasonable doubt in the prosecution case.''*

[22] The Magistrate, having considered the evidence in its entirety found that the prosecution has proved beyond reasonable doubt that the accused committed the two offences as alleged on the dates as charged, and found him guilty and convicted him accordingly. The matter was referred to the High Court for sentencing pursuant to section 190(1) (b) of the Criminal Procedure Act 2009.

High Court

[23] The High Court (per Sunil Sharma, Judge) having considered the facts, the provisions of the Sentencing and Penalties Act 2009, and especially the aggravating factors, sentenced the accused to 15 years 9 months and 16 days imprisonment with a non-parole period of 13 years. A permanent non-molestation order under the Domestic Violence Act was also ordered to protect the victim from the accused.

Leave Stage (Before Prematilaka, RJA)

[24] **Ground 1**: The learned single Judge clarified that the ground of appeal is based on the learned Magistrate's reasoning in paragraph 11 of the *voir dire* ruling in accepting the caution interview as admissible at the trail, partly due to the failure of counsel for the defence to comply with the rule in **Browne v Dunn** (1893) 6 R 67 at 70, 76.The rule is originally a rule of practice in civil cases requiring counsel to put the substance of any contradictory evidence to the opposing witness during cross-examination, so that the witness may comment on it. The rule of practice ensures that a witness has the

opportunity to explain a matter of substance if the opposing party intends to later contradict the witness in relation to it. Failure to provide that opportunity is referred to as 'lack of putting'.

[25] The learned single Judge referred to **HKSAR V AHAN Hing Kai** CACC 65/2017[2019] HKCA 172 (24 January 2020)**,** where the application of the **Browne v Dunn** rule in criminal cases was examined and determined that there are two aspects to this rule namely: (i) It is a rule of practice and procedure designed to achieve fairness to witnesses and a fair trial between the parties, (ii) It is a rule relating to weight or cogency of evidence. The case also set out the 10 relevant principles in the application of this rule in criminal cases.

[26] The learned single Judge cautioned trial Judges to be careful not to embark on impermissible reasoning founded on lack of puttage.

[27] The appeal court should put to one side and disregard those irregularities which plainly could not, either singly or collectively, have affected the result of the trial and therefore cannot properly be called miscarriages. A miscarriage is more than an inconsequential or immaterial mistake or irregularity (vide **R v Matenga** [2009] 3 NZLR 145). An error or irregularity which could not have affected the result of the trial will not amount to a miscarriage of justice and inconsequential error, including an inconsequential error of law, is not a miscarriage (Vide **Hoffer v The Queen** [2021] HCA 36 (10 November 2021).

[28] The learned single judge found the Magistrate's reasoning to be mistaken and was inclined to leave it to the full court to consider:

(a) Whether the Magistrate's flawed reasoning arising from defence counsel's lack of puttage amounts to a mere irregularity or a miscarriage which could affect the result of the trial.

(b) If there had been a miscarriage, whether it would amount to a substantial miscarriage of justice or not.

[29] The learned single Judge held that, disregarding the interview, there was still the evidence of the victim supported by medical evidence to prove the charges. And even

assuming that the above error of law had led to a substantial miscarriage of justice and therefore the admission of the cautioned interview is to be disregarded, the evidence of the victim and the doctor may still sustain the verdict of guilty. A clarification by the full court on the approach to lack of puttage by Magistrates and trial Judges is very opportune and essential.

[30] The learned single Judge was also concerned that it appears, the learned Magistrate had not dealt with the evidence that the Appellant had complained to the Magistrate and shown the Magistrate injuries inflicted on him whilst in Police custody, and for which he was sent for medical examination. This evidence relates to the issue surrounding the caution interview, and whether it was voluntarily given by the Appellant.

[31] **Ground 2:** The learned single Judge also allowed leave with respect to this ground, in which the Appellant had challenged the statement made by the Magistrate at paragraph 12 of the judgment , to the effect that the doctor's finding was consistent with the history related by the patient that there was vaginal penetration as per the complaint, as the statement was hearsay, relying on **Subramanianm v Public Prosecutor** [1956] 1 WLR 965.He reasoned that, if the medical history is admitted in evidence, its use on admission is confined to only show the consistency of the person who relates it to the medical officer. It could not be used to corroborate the victim's evidence: **Navaki v State** [2019] FJCA 194; AAU0087.2015 (3 October 2019). The same rules that apply to recent complaints evidence would apply to the evidence of medical history and complaints made to investigating officers: **Senikarawa v State** AAU0005 of 2004S:24 March 2006[2006] FJCA 25).

[32] In **Navaki** it was held in paragraph 17 of judgment, that a recorded history is not the result of a doctor's medical examination or expertise. It is what the doctor heard from the victim, and if the history is not confirmed by the person who said it and by the person who heard it, it remains hearsay and cannot be admitted in evidence.

[33] The learned single Judge held that the judgment does not indicate whether the victim had spoken to anything she had told the doctor, and if that is correct, the Magistrate may have considered hearsay material to show consistency of the victim's evidence enhancing her credibility. If that be the case, the full court will have to consider

whether a reasonable Magistrate properly directing himself would, on the evidence properly admissible, without doubt have convicted. In other words, excluding this piece of evidence of history recorded in the medical report, the victim's evidence and medical evidence was sufficient and strong enough to establish the charge beyond reasonable doubt. The learned single Judge ruled that this complaint cannot be examined any further without the trial transcripts, and leave is allowed for the full court to consider, especially the evidence of the victim and the doctor.

[34] **Ground 3**: Having examined the Appellant's cautioned interview, the learned single Judge found that there is a clear confession that the Appellant penetrated the victim's vagina with his penis on the first occasion (from Q37-Q45), however, on the second occasion, the Appellant had admitted only to rubbing his penis on her vagina and licking her vagina because he wanted to give some feelings to the victim and then have sexual intercourse (Q53-Q57 &Q70). The issue of whether attempted rape had been proved beyond reasonable doubt was left to the full court to examine with the help of the trial transcripts.

[35] **Ground 4** : The learned single Judge having considered the evidence of the victim and the Appellant, and the series of relevant cases on situations and circumstances which affect and influence the determination of whether consent was given or not, held that, in the context of the case, he had no doubt that the victim had not consented to sexual intercourse, and it was open to the assessors to find the Appellant guilty on the totality of the evidence-See **Kumar v State** [2021] FJCA 181; AAU102.2015 (29 April 2021) at paragraphs [8] to [24] and **Naduva v State** [2021] FJCA 98; AAU01125.2015 927 May 20210 at paragraphs [36] to [44]. Also the trial Judge could have convicted the Appellant on the evidence before him (**Kaiyum v State** [2013] FJCA 146; AAU71 of 2012 (14 March 2013). Leave was disallowed.

[36] On the grounds against sentence **(Grounds 5, 6 and 7),** the learned single Judge allowed leave only on the question of inordinate delay. He found that the High Court Judge had applied the correct tariff of 11-20 years for juvenile rape, and taken 11 years as starting point: **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018). He had considered appropriate aggravating and mitigating circumstances to arrive at the sentence. Discount was given for pre-trial remand period, and there is no evidence of double counting.

[37] However, the learned single Judge was concerned with the delay, especially as the offence was committed in July 2008, after numerous adjournments for one reason or another, the case proceeded to trial only in June 2019, after a period of approximately 11 years. Further, when a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered: **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006).The approach taken by the appellate court in an appeal against sentence is one that could reasonably be imposed by a sentencing Judge or, in other words, that the sentence imposed lies within the permissible range : **Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015); if outside the range, whether sufficient reasons have been adduced by the trial Judge.

Appellant's Case

[38] The Appellant had field written submissions and Counsel for the Appellant also made oral submissions at the hearing.

[39] **Ground 1:** The Appellant submits that the learned trial Magistrate had wrongly decided to admit into evidence the caution interview statement, and had mistakenly assessed the evidences as evident from paragraph 11 of the *Voir Dire* Ruling. The paragraph states:

> *"11. I've carefully considered all the evidence of both prosecution witnesses and accused in relation to the issue at hand. I find prosecution witnesses to be more credible and believable. The version of events alleged by the accused person has not created any reasonable doubt in prosecution case. Apparently, most of the allegation asserted by accused in his testimony was never put to state witnesses in cross-examination and appears to be an afterthought. I thus find that the accused person had given his caution interview statement voluntarily.''*

[40] The Appellant submits that the learned trial Magistrate viewed the evidences of the Appellant in aspects surrounding the obtainment of his statements in the caution interview as an afterthought because it was not suggested in cross-examination to the prosecution witnesses. The Appellant was challenging the admissibility of the confession by the Magistrate, and in his evidence (page 375 of the Court Record) he had testified that he was assaulted by 8 to 10 police officers whilst he was kept at the

Ba Police Station. He was not given the right to remain silent during the interview and there were about 3 to 4 police officers who threatened to punch him.

[41] The Appellant submits that under such circumstances the appellate Courts would not interfere with the ruling by a Judge or Magistrate unless the Court is satisfied that the evidences had been wrongly assessed or the Judge or Magistrate had failed to apply the correct principles: **Tuilagi v State** [2018] FJSC 3; CAV0013.2017 (26 April 2018) at paragraph [46]. The evidences of PW2, Kamal Gounder and PW3 Keshawn are relevant as their evidences relate to the recording of the caution interview statement.

[42] The Appellant submits that considering the totality of the evidences of the prosecution witnesses including PW2 and PW3, the trial Magistrate was wrong to have concluded that the Appellant's contention was an afterthought given the Appellant had not put the allegations to the prosecution witnesses. That there is no proper basis for the learned Magistrate to use the failure of cross-examination of Police witnesses as a means to disbelieve the Appellant.

[43] The Appellant submits that the learned single Judge had discussed **Browne v Dunn** (supra) and on how the courts have dealt with the non-compliance of the rule, and on how the appellate Courts have approached the issue in relation to the result of the trial. The learned single Judge had in paragraph 11 of his ruling , whether the Magistrate's flawed reasoning arising from the defence counsels lack of puttage amounts to a mere irregularity or a miscarriage which could have affected the result of the trial. And whether the miscarriage of justice would amount to a substantial miscarriage of justice. The Appellant submits in response to the Learned single Judge's ruling on whether the lack of puttage amounts to a mere irregularity, it is not clear from the judgment which of the allegations asserted by the Appellant was not suggested to the prosecution witnesses. The Magistrate appeared to have approached the issue in general terms without specifically stating what aspects of the Appellant's evidences was not suggested or put across in cross-examination, and to which witness in particular.

[44] The Appellant submits that a closer look at the trial transcript of the Appellant's evidence in chief, it is the allegation of the three to four police officers having

threatened to punch the Appellant during the time he was interviewed, that should have been put across to the interviewing and witnessing officer in cross-examination.

[45] The Appellant submits that in this case, whether the Appellant had voluntarily given his caution interview statement came down to the word of the Appellant against the word of the police officers. That the learned Magistrate ought to have determined the credibility of whose version the court believed and relied upon. There would have been other possible explanations as to why the allegations was not suggested across to the interviewing and witnessing officers other than a recent invention by the Appellant. Under the circumstances, the Appellant submits, the learned Magistrate could have recalled the interviewing and witnessing officers to answer to the allegations of threat by police officers made by the Appellant. Under the circumstances also, it could be presumed that the remaining police witnesses could not have been cross-examined on, given their role and part in relation to the recording of the caution interview could have been speculative. It is submitted that the irregularity is material. As to the effect of the irregularity on the trial itself, it would have a bearing on the admissibility of the caution interview statement. Had the Magistrate not used the lack of puttage to discredit the Appellant's account, it is hard to say whether the Magistrate would have ruled the caution interview admissible.

[46] **Ground 2:** The Appellant submits that the learned Magistrate erred in his determination that the medical doctor's finding is consistent to the history relayed, as the history relayed by the complainant is hearsay and not admissible evidence. The Appellant contends that the learned Magistrate's finding in paragraph 12 of the judgment was based on inadmissible evidence. What the complainant told the doctor contained in the medical history relayed in the medical report is hearsay: **Subramanium v Public Prosecutor** [1956] 1 WLR 965, where it was held:

> *"Evidence of a statement made to a witness…. may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."*

[47] The Appellant submits that neither the judgment nor the trial transcripts indicate the purpose prosecution was offering for the history relayed. Also, nothing was mentioned whether prosecution was relying on the medical history relayed in the

medical report as part of the case, for the Magistrate to consider and rely upon it as evidence. The Appellant submits that it is clear that the learned Magistrate relied on the history relayed to decide on the guilt of the Appellant, as he had relied on the evidence in its entirety when deciding whether the prosecution has proven beyond reasonable doubt, its case (paragraph 23 of judgment and page 244 of Court Record).

[48] The Appellant submits that, what was relayed by the complainant to the doctor was inadmissible, and there was no basis in treating the evidence as admissible. No such evidence was given, according to the transcript. Even if it was and is accepted, the purpose of such evidence did not corroborate the complainant's account as to the truth, it is relevant only to the issue of consistency of the complainant's conduct which was a matter going to her credibility and reliability as a witness. In other words what the complainant had said in court is consistent to what she had told the doctor following the incidents. This means that the Magistrate was erroneous to have relied on inadmissible evidence to find the medical findings was consistent to the history relayed that there was vaginal penetration. The question arises is whether there is substantial miscarriage of justice by such error in convicting the Appellant.

[49] The Appellant submits that the error committed by the learned Magistrate as contained in Grounds 1 and 2 of the appeal, amounts to/or leads to a substantial miscarriage of justice, relying on **Aziz v State** [2015] FJCA 91; AAU112.2011 (13 July 2015), and **Naduva v State** [2021] FJCA 98; AAU0125.2015 (27 May 2021).It is difficult to say whether the conviction is inevitable , if the caution interview statement and the medical history relayed in the medical report that there was vaginal penetration, were ruled inadmissible by the learned Magistrate.

[50] **Ground 3:** The Appellant submits that the conviction on the offence of attempted rape (count 2) is not supported by the totality of the evidence. The complainant had not testified to any acts of attempted rape in her evidence in chief (page 365 of Court Record). The only evidence on attempted rape in cross-examination (page 367 of Court Record), is raised when the defence counsel had questioned complainant as to why she had gone to the Appellant a second time, when she had responded he had threatened her. The Appellant submits that, it may have been a strategy of the defence counsel to discredit the complainant on the rape allegation. There is no other evidence in the trial transcripts on the offence of attempted rape.

[51] Apart from the complainant's evidence the only other evidence is the Appellant's caution interview, where the Appellant in his caution interview, in Questions and Answers at pages 53, 54 and 70, verbatim as follows:

Q: 53. What else did you do with Loriza

A: On Thursday 17.07.08, it was in the afternoon I woke up after sleeping, then called Loriza in my room, when Loriza came in my room. I laid her on my bed, lifted her dress, unwrapped my towel, got on top of her and rubbed my penis on her vagina.

Q: 54. What else you did?

A: After this I licked her vagina.

Q: 70. What was in your mind on 17.07 08 about 5pm when you were rubbing your penis on Loriza's vagina?

A. I want to give some feeling to Loriza then have sexual intercourse with her.

[52] The Appellant submits that the elements of attempted rape were discussed in **Bulimaiwai v The State** [2005] FJHC 261; HAA0068J.2005S (2 September 2005) as per Madam Justice Shameem, who in discussing the elements of the offence of attempted rape remarked that "*A great deal depends on the circumstances of each case."* The Appellant submits that in light of evidences touching on the allegations of attempted rape charge, in light of the complainant's evidence and the Appellant's admissions in the caution interview, there is insufficient evidences as to the consent element. The Appellant submits, that with the caution interview statement placed aside, with only the complainant's evidence, on the basis of appeal ground 1, that the learned Magistrate was erroneous in admitting the caution interview into evidences, the complainant's own evidences is not sufficient to uphold the conviction on attempted rape.

[53] On the sentence ground, the Appellant submits that the inordinate delay factor ought to be taken into account in sentencing. All in all, it took 12 years for the case to reach disposition. Appellant was first produced in the Magistrate's Court on 22nd July 2008 (page 348 of Court Record). The case came to finality on 23rd November 2020 on the

Appellant's conviction. There were varying reasons contributing to the delay, including that the matter was listed 8 times for hearing, and the dates were vacated mostly due to the defence due to unavailability of the defence counsel representing the Appellant. Section 14 (2) (g) of the Constitution is relevant, and the principles applicable are reinforced by the Supreme Court in **Chandra v State** [2023] FJCA 207; AAU0017.2019 (28 September 2023). Also see the discussion in **Nalawa v State** [2010] FJSC 2 at paragraphs 20 and 21. There has in this case been systematic delay of 12 years and the Appellant should not be held fully responsible as it was not of his own doing that solely contributed to the delay. In **Chandra's** case the delay was 8 years, and this Court had varied the sentence in not fixing a non-parole period.

[54] In concluding the Appellant submits that the appeal be allowed and if so, a re-trial would be the most appropriate remedy given the errors raised. However, considering the circumstances of the case it would not be in the interests of justice to order a re-trial. The complainant was 11 years old at the time of the alleged incidents and was 21 years old when she testified at the trial in 2019.The length of time since the allegations may affect one's memory and the availability of the witnesses would contribute to the circumstances of the case.

Respondent's Case

[55] The Respondent had filed a written submissions and Counsel also made oral submissions at the hearing. It submits that the main contention with regard to **Ground 1** is that the learned Magistrate reasoning at paragraph 11 of the Voir dire ruling arising from the lack of puttage done by his counsel being an irregularity that is material, and that could have excluded the admissibility of the caution interview. The Appellant acknowledges that the learned single Judge had ruled that this issue needs to be clarified by the full court.

[56] The State submits that the most recent authority on the subject, in **Bainimarama v State** [2025] FJCA 53; AAU0019.2024 (14 April 2025), single Judge of this Court made the following observations:

> *"[24] I am of the view that whether Browne v Dunn rule was properly applied and whether the inference drawn therefrom on 01st appellant's testimony of lack of knowledge about CID/HQ PEP 12/07/2019*

investigation (which he allegedly attempted to stop) is justified or not, are matters of law to be examined by the full court. If the answer is in the negative, the full court will then have to decide whether the misapplication of Browne v Dunn rule resulted in a miscarriage of justice within section 23(1) (a) of the Court of Appeal Act and whether it could or could not have affected the High Court decision to overturn the acquittal of the 01st appellant in the light of overall strength of the prosecution case. ***A miscarriage is more than an inconsequential or immaterial mistake or irregularity. An error or irregularity which could not have affected the result of the trial will not amount to a miscarriage of justice and inconsequential error, including an inconsequential error of law, is not a miscarriage. Even if there has been a miscarriage of justice, unless it is a substantial miscarriage of justice, it will not lead to a successful outcome i.e. overturning the conviction.***

[25] ***An incidental question of law would be how far a Magistrate or a Judge is bound by his or her view formed at the close of the prosecution case and the weight, if any, that would be attached to a finding of a prima facie case made at the close of the prosecution case on the ultimate finding of guilty and conviction at the end of the trial after the conclusion of the defence case. A further question of law is to what extent the appellate court is permitted and would interfere with the factual findings of a trial Judge who has had the benefit of seeing trial proceedings including the demeanour of witnesses as spelt out by numerous legal authorities in the Commonwealth and Fiji. In Robinson Helicopter, French CJ, Bell, Xeane, Nettle and Gordon JJ put the allowance of the advantage of the trial judge thus at [43]:…. A court of appeal should not interfere with a judge's findings of facts unless they are demonstrated to be wrong by "incontrovertible facts or uncontested testimony", or they are glaringly improbable" or "contrary to compelling inferences". In Lee v Lee, however, the High Court put this allowance somewhat more narrowly. Thus Bell, Gageler, Nettle and Edelman JJ stated at [55]: Appellate restraint with respect to interference with respect to interference with trail judge's findings unless there are "glaringly improbable" or "contrary to compelling inferences" is as to actual findings which are likely to have been affected by impressions about the credibility and reliability of witnesses formed by the trial judge as a result of seeing and hearing them give their evidence. It included findings of secondary facts which are based on a combination of these impressions and other inferences from primary facts."***

[57] The State submits that the learned Magistrate is the trier of fact and law who is tasked to determine the evidence presented by both the parties for the purpose of the Voir dire and the trial. At the trial the prosecution called 10 witnesses, 8 of whom were called as witnesses for the Voir dire. The Appellant's grounds for the Voir dire were:

(a) That the statements were obtained in breach of the Accused's right to Counsel before his arrest, before his caution interview and whilst in custody,

(b) That the statements were obtained in circumstances that were unfair to the Accused.,

(c) The Accused was systematically softened to the interview in that he was kept in custody in circumstances which was degrading and inhumane,

(d) That the statements were obtained in circumstances that were oppressive,

(e) That the statements were obtained in breach of Rule 2 and 4 of the Judges' Rules, and

(f) The Accused was forced to comply with the questions put to him and also to endorse his signature whilst the Accused was suffering from serious injuries.

[58] The State submits that the Appellant gave evidence at the Voir dire and trial proper, however the cross – examination was brief by his counsel. The learned Magistrate as trier of fact and law was required to adjudicate on the evidence presented before him. The learned Magistrate had the benefit of observing the 8 witnesses demeanour, he was in a better position to determine the credibility and reliability of the witnesses, and hence it was fair for the learned Magistrate to make those observations in paragraph 1 of the Voir dire ruling.

[59] The State submits that the principle enunciated in **Isoof v State** [2004] FJCA 18; AAU0011.2022 (2 February 2024) applies to this ground, as follows:

"[48] Trial Judges must be careful not to embark on impermissible reasoning founded upon lack of puttage (see Abourizk v The State CAV012 of 2019 (28 April 2022).An examination of an accused person which proceeds by reference to there being but one reason why a matter has not been put to a witness is 'fraught with peril' (per King CJ in R v Manunta [1989] SASC 1628;(1989) 54 SASR 17).King CJ observed that there may be explanations for the omissions which do not reflect upon the credibility of the accused, for example the defence counsel misunderstanding the accused's instructions or forensic pressure resulting in looseness in framing questions or not advancing certain matters deliberately upon which he had instructions but they were unlikely to assist the defence.

[49] The appeal court should put to one side and disregard those irregularities which plainly could not, either singly or collectively, have affected the result of the trial and therefore cannot properly be called miscarriages. A miscarriage is more than an inconsequential or immaterial mistake or irregularity (vide R v Matenga [2009] NZSC 18; [2009] 3 NZLR 145). An error or irregularity which could not have affected the result of the trial will not amount to a miscarriage of justice and inconsequential error, including an inconsequential error of law, is not a miscarriage (vide Hoffer v The Queen [2021] HCA 36 (10 November 2021)."

[60] The State submits that taking into account these submissions, the contention raised by the Appellant cannot be regarded as miscarriages of justice and Ground 1 and arguments in its support are baseless.

[61] The State submits with respect to **Ground 2** that, paragraph [12] of the judgment was made when the learned Magistrate was summarizing the prosecution evidence adduced at the trial and that when referring to paragraphs [14] to [23] of the Magistrate's analysis, that referred entirely to the direct evidence of the complainant and how she was not discredited during trial, how she maintained her stance, even though the law of corroboration is not required. The learned Magistrate further relied on the alleged confessions that were ruled admissible.

[62] The State submits that in **Navaki v State** [2019] FJCA 195; AAU0087.2015 (3 October 2019), similar issues , as in this ground, was raised which was discussed at length at paragraphs [10] to [19] as follows:

> *"[10] The complaint of the appellant is based on paragraph 29 of the judgment of the learned Magistrate, I quote*
>
> > *'[29] The prosecution case is primarily based on the evidence of PW1. This court accepts that there is no corroboration required in sexual offences cases. But medical report has proved the victim was not a virgin at the time of examination (sic). Further she had told to the doctor how she had lost her viginity,She had told that the accused raped her one and half years ago. The victim was raped when she was at the age of 8 to 11. The age and dates were not very clear but it does not vitiate the conviction. It strengthens the prosecution version. I hold the victim's version id cogent and impressive. In Sumanasena case (supra) the… observed that "Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon. "I have no hesitation to accept victim's evidence as credible, reliable and truthful." (Emphasis added)*
>
> *[11] The appellant complains that what the learned Magistrate had used as part of his reasoning in paragraph 29 (as underlined) of the judgment is in fact what the victim purports to have told the doctor recorded under the 'history by patient' and tantamount to hearsay evidence. He argues that it is a clear breach of the rules of evidence causing a gross miscarriage of justice.*
>
> *[12] The State admits that the learned Magistrate had used what the victim had told the doctor to place credence on her evidence but takes up the position that because the medical report was allowed to be produced without any objection by the appellant at the trial it became part of the evidence and the trial Judge was entitled to use the history narrated by the victim to the doctor in the manner he did in the judgment.*

[13] When one examines the short history found in the medical report it is clear that the learned Magistrate had used only a part of it in paragraph 29 of the judgment and treated that portion as strengthening the prosecution version.

[14] I have examined the evidence of the victim but do not find any evidence from her that she had narrated a history to the doctor at the time of examination. In fact the victim had not been asked anything of what she had told the doctor by the prosecution. If the prosecution intended to use the short history as recorded in the medical report as part of the evidence in the prosecution case, it should have first elicited from the victim the fact that she narrated the same to the doctor. Secondly, the prosecution should have called the doctor to testify to the fact that the victim had told him the history which he recorded in the medical report. If these two conditions are not fulfilled such history remains as hearsay evidence. The only exception would be if the history in the medical report is specifically recorded as an agreed fact between the prosecution and the defence. Simply because the appellant had not objected to the production of the medical report, it does not necessarily mean that he was agreeing to the history recorded therein.

[15] What is admissible as a result of the consent of the appellant to produce the medical report is the medical findings and medical opinions of the doctor arising from the medical examination conducted by him and the admissibility of the report does not extend to matters such as history given by the patient in that such information is not ascertained by the doctor from his own examination of the victim.

[16] Usually and in the ordinary cause of business, the examination by the doctor commences with the ascertainment of the case history of the patient. This is a part of his professional duty as much as the physical examination and treatment and report thereon. However, a doctor is not expected to conduct an investigation into the commission of an offence. That is a matter for the police.

[17] The recorded history is therefore, not the result of the doctor's examination or expertise. History is what he had heard from the victim. If the history is not confirmed by the person who said and by the person who heard it, it remains hearsay and cannot be admitted in evidence. However, without fulfilling these requirements if such a statement is admitted in evidence it should be disregarded by the judge and not left to the assessors as its probative value is far outweighed by the prejudice it will cause the accused. If the assessors have heard or seen it they should be told that it is of no value and they should be warned to ignore it completely.

[18] In my view, what could have been made use of the medical report by the Magistrate was so much of the report as dealt with the examination of the patient and the professional opinions of the doctor and not the case history entered by the doctor on information supposedly supplied by the victim in as much as the victim did not speak to making such a statement to the doctor and the doctor was not even called as a witness. In cases where persons giving or recording the history (or one of them) are not called then the rules pertaining to hearsay evidence would apply. Even where such person and the doctor are called as witnesses, the value and weight of such evidence will vary from case to case.

> ***[19] On the other hand, if the history is duly admitted in evidence the purpose for which it could be used is to show only the consistency of the person who relates it to the medical officer. History recorded in the medical report could never corroborate the evidence of the victim."***

[63] The State submits it is absurd for the Appellant to adopt paragraph [12] of judgment alone and assert there was a miscarriage of justice. In this matter, it is evident, that in the learned Magistrate's analysis of the evidence, he was relying entirely on the direct evidence of the complainant and the admissible Record of interview. No reference was made to the medical report, hence there was no miscarriage of justice.

[64] On **Ground 3**, the State submits that the learned Magistrate decision in convicting the Appellant on the charge of attempted rape was justified. The prosecution had relied on the direct evidence of the victim. She was subject to cross-examination where she affirmed this count and she was not discredited as reflected in her evidence (paragraph 19 of submissions but paragraphs [14] to [23] of Magistrate's judgment.

[65] The State submits that apart from the complainant's evidence, the prosecution had relied on the admissible confession to bolster this allegation. This is reflected in the Appellant's admission at Q and A 51 to 58 of the Record of interview and Q and A 68 to 72 justifies the guilty findings made by the learned Magistrate, and the conviction that was entered on 23 November 2020, hence ground 3 is baseless and must be denied.

[66] On the sentence grounds, the State submits that the leave to appeal was allowed only on the question of inordinate delay. The State concedes that that there has been a systematic delay of 12 years until the disposal of the case. From the history of the delays provided and analysed, it appears the delay has been equally caused by everyone involved in the case, as illustrated by unavailability of judicial officers, accused changing his Solicitors , defence not ready for trail and also Prosecution not ready to proceed to trail. Section 14(2) (g) of the Constitution requires that a person charged for an offence has a right to be tried without unreasonable delay. The state conceded to the delay embracing the legal principle set in **Chandra v The State** (supra), Criminal Appeal AAU0017 of 2019 (28 September 2023), and acknowledging the sentencing remarks in the High Court did not address the issue.

[67] The State in conclusion submits that there is no reasonable prospect of the appeal succeeding on the grounds urged, and submits that the appeal be dismissed,

Analysis

[68] **Ground 1**- Whether the learned Magistrate was mistaken in admitting into evidence the caution interview statement of the Appellant, and in doing so, the Magistrate was mistaken in assessing the evidences It is trite law that when dealing at the trial with the admission into evidence of a caution interview and charge statement , the prosecution is as a matter of law required to prove beyond reasonable doubt that the caution interview and charge statement was obtained freely and without fear, force, threats or inducement, for the caution interview and charge statements to be admissible.

[69] In challenging the learned Magistrate's ruling (at paragraph 11) in accepting the caution interview the Magistrate relied (partly) on the failure of Appellant's counsel to comply with the rule in **Browne v Dunn** (supra). This is a rule of practice that requires the counsel to put the substance of any contradictory evidence to the opposing witness during cross-examination to give the witness an opportunity to explain and comment on a matter of substance that has been raised by a witness, in situations where, the opposing party intends to contradict the witness in relation to that evidence. This was not done in this case.

[70] The learned Magistrate found that the Appellant had voluntarily given his caution interview statement for the reason that most of the allegations made by the Appellant in his evidence were never put to the State witnesses in cross-examination in line with the rule in **Browne v Dunn** (supra). Under the circumstances, the Magistrate's decision cannot be interfered with unless the Court is satisfied that the Magistrate had wrongly assessed the evidences and had failed to apply the correct principles applicable to lack of putting: **Tuilagi v State** (supra).

[71] It is in evidence that the Appellant was assaulted by 8 to 10 Police officers, at the Ba Police Station, and he was not given the right to remain silent during the interview, and there were about 3 to 4 Police officers who threatened to punch him also at the Police station. It would appear that there is no proper basis for the Magistrate to use

the failure of cross -examination of prosecution witnesses, especially PW2 and PW3, as a means to disbelieve the Appellant. Did the Magistrate wrongly assess the evidence? Did the Magistrate mistakenly admit into evidence the caution interview and charge statement and mistakenly assessed the evidences resulting in the verdict of guilty?

[72] In closely examining the Magistrates' reasoning, he had discussed cases (with similar issues as in Ground 1) where trial Judges have gone to give reasons which are regarded as "*impermissible reasoning''* based on lack of puttage and there are examples. There may be other valid reasons why the lack of puttage occur in a case, and may have to do with the weighing by the defence counsel of the options that are open to the defence when a situation arises. The Court will need to look at the nature of the impact created by the mistake and or irregularity. An appeal court should put aside and disregard irregularities which, by their very nature, could not either on their own or considered with other evidence, have impacted the result of the trial and cannot be properly termed as miscarriages of justice: **Abourezk v The State; R v Manunta and Mohammed Raheesh Isoof v State** (supra). A miscarriage is more than an inconsequential or immaterial mistake or irregularity: **R v Matenga** (supra). An error or irregularity which could not have affected the result of the trial will not amount to a miscarriage of justice and inconsequential error, including an inconsequential error of law, is not a miscarriage: **Hoffer v The Queen** (supra).

[73] In the facts and circumstances of this case, the Magistrate's reasoning arising from the defence counsel's lack of putting appears to be mistaken, and amounts to an irregularity or a miscarriage which could not have affected the result of the trial. There were other options and issues which the Counsel for the Appellant at the trial would be contemplating some of which are raised in the discussion below in relation to Grounds 2 and 3.

[74] In my view, despite the Magistrate's mistakes, which led to the admission of the caution interview and charge statement, the victim's evidence supported by the medical evidence are sufficient to prove the charges against the Appellant. The Magistrate's mistake in law has not led to a substantial miscarriage of justice, as the evidence of the complainant and the doctor are still there and are sufficient to sustain the verdict of guilty.

[75] Ground 1 has no reasonable prospects of success. It has no merit.

[76] **Ground 2**: Whether the learned Magistrate was mistaken in determining that the doctor's medical finding are consistent with medial history relayed by the complainant when the history relayed by the complainant is hearsay and not admissible? This focuses on paragraph 12 of the Judgment which states:

> *"12. Further, the evidence of PW9 as noted in the report of the complainant shows that complainant's hymen was not intact. The doctor's finding was consistent with the history related by the patient that there was vaginal penetration as per the complaint.''*

[77] The Magistrate's consideration of the medical report require careful scrutiny. Numerous cases in the past have clearly made a distinction between what is in fact the doctor's findings based on the doctor's examination of the complainant, on the one hand and a complainant's medical history, that is, what the complainant told the doctor about himself or herself, which is also contained in a medical report, because different rules apply to each, when determining which evidence is admissible or otherwise: see: **Subramanium v Public Prosecutor** (supra). Statements by the complainant are hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement made by the complainant to the doctor. It is not hearsay when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. In this case, the Magistrate appears to have accepted that the history relayed by the complainant was the truth and had treated it as similar to the doctor's findings to bolster the medical evidence.

[78] Accepting for one moment that the alleged mistake committed by the Magistrate as contained in this ground amount to miscarriage of justice or to substantial miscarriage of justice (see **Aziz v State** (supra) and **Naduva v State** (supra)), can it be said that the conviction is inevitable, if the medical history relayed in the medical report that there was vaginal penetration, were ruled inadmissible by the learned Magistrate? The Appellant submits that the mistakes amount to substantial miscarriage of justice considered together with the allegations in Ground 1.

[79] Turning again to paragraph 12 of the judgment, it refers to two separate and independent events, in my view. The first contain the substance of what the complainant relayed to the doctor, and second was the result of the doctor's

examination of the complainant. Both are referred to in the medical report of the doctor. To be more specific, pages 346 to 347 of Court Record contain a Medical report from the Department of Paediatrics, Lautoka Hospital signed by Dr. Rigamoto S. Taito, Consultant Paediatrician dated 23 July 2008.Paragraphs 2 and 3 of the said letter refers substantially to the history as relayed by the complainant. Paragraph 4 of the letter refers to the medical examination carried out as follows:

> *"Lorenzo was examined in the presence of staff Arleta Vucago of Children's Ward……. Vaginal examination showed absence of hymen. Torn remnants of hymen were seen along the rim of the vaginal opening. No bleeding, discharge or laceration noted."*

[80] Paragraph 7 of the said letter states:

> *"……Examination showed a vagina devoid of hymen, which is torn, and only remnants seen at the vaginal rim consistent with penetration in the past. These findings are consistent with sexual intercourse or manipulation with fingers……."*

[81] The contents of the said medical report distinctly identifies what the doctor perceives to be history as relayed by the complainant, and the results or outcome of the examination by the doctor of the complainant on the day of the examination, 22nd July 2008 . In the case **Navaki v State** (supra), similar issues and challenge as raised in this case was before this Court, and which the Court discussed at length in paragraphs [10] to [19] of its judgment – see the full texts at paragraph [62] above, of this judgment. If guidance on how to treat or approach the evidences of the history and the medical examination which are contained in the same report is needed, paragraph [18] of **Navaki v State** (supra) offers guidance to the effect that , when considering what use can be made of the medical report by the Magistrate, it is the part of the medical report that dealt with the examination of the patient and the professional opinions of the doctor and not the case history entered by the doctor on the information supposedly supplied by the victim in as much as the victim did not speak to making such a statement to the doctor and the doctor was not even called as a witness. The history in such situation is hearsay and inadmissible. However, if the history is duly admitted in evidence, the purpose for which it could be used is to show only the consistency of the person who relates the history to the medical practitioner. History recorded in the medical report could never corroborate the evidence of the victim,

although, no corroboration is required for sexual offences under the Criminal Procedure Act 2009.

[82] To rely solely on paragraph [12] of the Magistrate's judgment when asserting there was a miscarriage of justice, is clearly not sufficient argument for this Court to allow this ground and the appeal as a whole. In paragraph 12 of the judgment, the Magistrate was summarizing the evidence for the prosecution. From paragraphs [14] to [23] the Magistrate was referring entirely to the direct evidence of the complainant and how she was not discredited during the trial, how she maintained he stance. Even though the law of corroboration is not required, the learned Magistrate further relied on the alleged confessions that was ruled admissible. Placing the history relayed aside, the result of the medical examination and the medical opinion in the medical report are admissible. Ground 2 has no reasonable prospect of success. There is no merit in this ground.

[83] **Ground 3**: It challenges the conviction on the offence of attempted rape: whether the conviction on the charge of attempted rape is not supported by the totality of the evidence? The analysis in above for grounds 1 and 2 also apply to this ground. It is argued against conviction on this ground that with the caution interview and charge statement aside as inadmissible and the medical evidence being discredited and as hearsay and inadmissible, there is also no evidence against the Appellant on the second count of attempted rape. However, the Appellant's verdict of guilty and subsequent conviction on this count is based on the prosecution evidence, in particular on the direct evidence of the complainant. The complainant was subject to cross-examination where she affirmed this count. She was not discredited as reflected in her evidence. On the admissibility of the caution interview, that is dependent on the nature of the irregularity, as already discussed above. On the admissibility of the medical evidence, the issues has adequately been covered above on ground 2. The evidences of both the complainant and the Appellant, and the circumstances of the alleged commission of the offences of rape and attempted rape, when considered, in totality are sufficient to support the guilty verdict and conviction in count 2. This Ground has no prospect of success. It has no merit.

[84] In the final analysis on the grounds against conviction, it is noted that the Appellant has completely and totally denied the charges referred to in the two counts and for

which he was convicted. He admitted in evidence that he was living in the same house as the complainant, and the evidence indicate that the Appellant, given the factual circumstances had an opportunity to commit the offences. The Appellant relied on the allegation of inadmissibility of evidence, as his caution interview was not voluntary. He contended that the allegations against him were fabricated. In defence he alleged that he was framed by one Monica, who had reported the matter to the Appellant's mother and the complainant's grandmother. How and for what reason would an 11-year-old fabricate a story as serious and personal as the facts surrounding this case remains an unanswered question. The evidence and the law as relevant, as discussed affirm that the finding of guilt and conviction entered on the two counts were justified. The appeal against conviction fails on all the three grounds.

[85] On the sentence ground, the Appellant argues that the sentence should reflect the inordinate delays in bringing the criminal proceedings to finality. The High Court had sentenced the Appellant to 15 years 9 months and 16 days imprisonment with a non-parole period of 13 years. The sentence was determined having regard to the provisions of the Sentencing and Penalties Act and the aggravating factors. A non-molestation order under the Domestic Violence Act was also ordered to protect the complainant from the Appellant.

[86] When considering ground 5, 6 and 7 against sentence at the leave stage, the learned single Judge found that the correct tariff of 11-20 years for juvenile rape and 11 years as starting point were correctly applied in line with **Aitcheson v State** (supra). When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered: **Koroicakau v The State** (supra). The approach taken by the appellate court in an appeal against sentence is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing Judge or, in other words, that the sentence imposed lies within the permissible range: **Sharma v State** (supra); if outside the range whether sufficient reasons have been adduced by the trial/ sentencing Judge.

[87] In consideration of the above, in the circumstances of the case, there has definitely been inordinate delays for which all the stakeholders including the Court and Counsels have a contributed to. That being the case, I allow this ground against sentence. There is merit in this ground. Under the circumstances, the sentence given by the High Court

is amended by reducing the non-parole period of imprisonment from 13 years to 12 years non-parole period of imprisonment.

Rajasinghe, JA

[88] I have read the draft judgment of Qetaki, RJA and agree with the reasons and orders.

Orders of the Court

1. *The appeal against conviction is dismissed on all grounds.*
2. *The appeal against sentence is allowed with respect to length of the non-parole period.*
3. *The term of 13 years non-parole period is revoked, and substituted by a term of 12 years non-parole period effective from 25/01/2021.*

Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

Hon. Mr. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Hon. Mr. Justice Thushara Rajasinghe
JUSTICE OF APPEAL

Solicitors
Legal Aid Commission for the Appellant
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